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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,137	01/24/2002	Brooke L. Small	09/660450US1	3174

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EXAMINER

DANG, THUAN D

ART UNIT PAPER NUMBER

1764

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,137

Applicant(s)

SMALL ET AL.

Examiner

Thuan D. Dang

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 19, 29-31, 33, 34, 36-39 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 19, 29-31, 33-34, 36-39, 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 30, 31, 33, 34, and 36-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 5, 30, 31, and 36, the term “less than about” is indefinite since this expression makes the presence of vinylidene or tri-substituted olefins be zero.

Claims 31 and 36 is product claims. However, the claim does not recite any component is a desired product produced by the process. Note that vinylidene or tri-substituted olefins are undesired by-product, the initial and the seconds are reactants.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 6, 8, 9, 19, 29, 30, 31, 33, 34, 36, 38, 39, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Antonsen (3,346,662).

Art Unit: 1764

According to MPEP 2113, a product-by-process is limited by and defined by the process. Patentability is based on the product and does not depend on its method of production.

The claimed invention is a product-by-process.

Antosen discloses a product containing unbranched internal olefinic dimers (col. 1, lines 10-12).

On column 3, lines 63-68, Antosen discloses that during the process, only 65-85% of olefins (monomer) are converted. Therefore, the product of Antosen should contain from 15 to 35 percent of unreacted olefins (versus 18.5 to 80 % of olefins in claimed product).

Also on column 3, lines 63-68, Antosen discloses that 50 to 85% of dimers are linear internal dimers (versus 27 to 81 % of linear internal dimers).

One having ordinary skill in the art must recognize that the amount of vinylidene in the Antosen product must be in the claimed range “less than about five weight percent” (col. 1, lines 21-25, col. 3, lines 63-68; col. 5, lines 55-67). Also review the above 112, 2nd paragraph.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1764

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3 and 4 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Antonsen (3,346,662).

Antonsen discloses a process as discussed above.

Antonsen appears not to disclose the presence of methyl-branched olefin dimers and trimers in the product (see the entire patent for details, especially col. 5, lines 56 and 57).

However, it is expected the Antonsen product must inherently contains these by-products since the Antonsen reaction is also head-to-head coupling reaction to produce linear internal dimers (col. 5, lines 54-65).

Claim Rejections - 35 USC § 103

Claims 7 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antonsen (3,346,662).

Art Unit: 1764

Antonsen discloses a process as discussed above.

Antonsen does not disclose the monomer is butene and the dimer is a dimer of butene (col. 1, lines 10-12). However, butene and hexene are paraffinic homologs which have very similar chemical properties.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Antonsen product by using butene as monomer if dimer of butene are desired since it has been established that closely relate homologs, analogs and isomers in chemistry may create a prima facie case of obviousness. *In re Dillon* 16 USPQ 2d 1897, 1904 (Fed. Cir. 1990); *In re Payne* 203 USPQ 245 (CCPA 1979); *In re Mills* 126 USPQ 513 (CCPA 1960); *In re Henze* 85 USPQ 261 (CCPA 1950); *In re Haas* 60 USPQ 544 (CCPA 1944).

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan D. Dang whose telephone number is 571-272-1445. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Thuan D. Dang
Primary Examiner
Art Unit 1764

10056137.20060621

A handwritten signature in black ink, appearing to be 'Thuan D. Dang', written in a cursive style with a long horizontal stroke extending to the left.